



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BY FACSIMILE (614) 621-0010 AND U. S. MAIL

SEP 15 2008

Albert J. Lucas, Esquire
Calfee, Halter & Griswold LLP
1100 Fifth Third Center
21 East State Street
Columbus, Ohio 43215-4243

RE: MUR 5871/Howard D. Talbott

Dear Mr. Lucas:

On August 19, 2008, the Federal Election Commission accepted the conciliation agreement submitted on behalf of your client, Howard D. Talbott, in settlement of violations of 2 U.S.C. § 441f, a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalties are due within 30 days of the conciliation agreement's effective date.

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Tracey L. Eigon", is written over a horizontal line.

Tracey L. Eigon
Attorney

Enclosure
Conciliation Agreement

28044211103

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR: 5871

Howard D. Talbott

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)**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission"), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Howard D. Talbott ("Respondent") knowingly and willfully violated 2 U.S.C. § 441f.

NOW, THEREFORE, the Commission and Respondent, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over Respondent and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondent has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondent enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The Federal Election Campaign Act of 1971, as amended ("the Act"), prohibits any person from making a contribution in the name of another, or for any person knowingly to permit his or her name to be used to make such a contribution. See 2 U.S.C. § 441f. Moreover, no

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person may knowingly help or assist any person in making a contribution in the name of another.

11 C.F.R. § 110.4(b)(1)(iii).

2. During the 2003-2004 election cycle, a person could contribute no more than \$2,000 to a candidate and his or her authorized committee per election. See 2 U.S.C. § 441a(a)(1)(A).

3. On October 30, 2003, Bush-Cheney '04, Inc. hosted a campaign fundraiser at the Hyatt Regency hotel in Columbus, Ohio, to which the admission fee was a \$2,000 contribution – the maximum amount an individual could give to Bush-Cheney '04, Inc.

4. On May 31, 2006, Thomas W. Noe pled guilty to federal charges of making illegal conduit contributions in connection with the October 30, 2003 campaign fundraiser. The indictment stated that Mr. Noe used \$45,400 of his funds to make contributions over the legal limits, and concealed the true source of the contributions by making them in the names of other individuals, known as "conduits," and also recruited "super-conduits," who not only acted as conduits but also recruited additional conduits and passed funds from Mr. Noe to those additional conduits.

5. The indictment further stated that Thomas W. Noe requested that each conduit contribute money to Bush-Cheney '04, Inc. in his or her own name and attend the fundraiser; provided funds to conduits as an advance on or reimbursement for their contribution; and took steps to conceal the activity by making payments to several conduits in amounts slightly below the amount of the conduits' contribution, and by instructing several conduits that, if asked in the future about the payments, they should lie and say the payments were a loan from Mr. Noe.

6. Thomas W. Noe provided a check in the amount of \$14,300 to Respondent, a super-conduit, as an advance on or reimbursement for contributions to Bush-Cheney '04, Inc., and Respondent then wrote checks in the amounts of \$3,750, \$3,500 and \$3,900 to additional conduits, Douglas Moormann, Jim Mermis, Dwayne Sattler, and their wives, as an advance on or

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reimbursement for contributions those conduits made to Bush-Cheney '04, Inc. Thomas W. Noe instructed Respondent to vary the amounts of the reimbursement checks for the three couples so that the checks would not be made for exactly \$4,000.

7. The knowing and willful standard requires knowledge that one is violating the law. See *Federal Election Commission v. John A. Drameci for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). *Id.* at 214-15.

8. Respondent filled out a donor card stating that he was making a \$2,000 contribution with his personal funds when, in fact, the funds of Thomas W. Noe were used to make the contribution. In addition, Respondent recruited other conduits to make contributions to Bush-Cheney '04, Inc. and passed along funds from Mr. Noe to reimburse their contributions, knowing that the conduits would also be filling out donor cards indicating that they were making contributions with their personal funds when Noe's money was being used for the contributions.

V. Respondent violated 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made in the name of another. The Commission has evidence it believes is sufficient to demonstrate that this violation was knowing and willful, but Respondent does not admit to the knowing and willful aspect of the violation.

VI. 1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Five Thousand Dollars (\$5,000), pursuant to 2 U.S.C.

§ 437g(a)(5)(A).

2. Respondent will cease and desist from violating 2 U.S.C. § 441f by permitting his name to be used to effect a contribution made in the name of another or by assisting

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a person in making a contribution in the name of another.

3. Respondent Howard D. Talbott, through the submission of extensive financial documentation to the Commission, has demonstrated that financial hardship prevents him from paying the full civil penalty to the Commission. The Commission regards these submissions and representations as material representations. Due to the mitigating circumstances presented by Respondent Talbott's financial condition, the Commission agrees to depart from the civil penalty that the Commission would normally seek for the violations at issue, and the Commission agrees that a civil penalty of five thousand dollars (\$5,000) shall be due. If evidence is uncovered indicating Respondent's financial condition is not as stated, a total civil penalty of sixty-four thousand dollars (\$64,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than thirty (30) days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.


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X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Thomasenia P. Duncan
General Counsel

BY:


Ann Marie Terzaken
Associate General Counsel
for Enforcement

Date

9/5/08

FOR THE RESPONDENT:


Howard D. Talbott

Date

April 30, 2008